

July 21, 2015

Mailed Electronically



Employee Benefits Security Administration
Office of Regulations and Interpretations
U.S. Department of Labor
200 Constitution Avenue, NW
Room N-5655
Washington, DC 20210

Office of Exemption Determinations
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue, NW
Suite 400
Washington, DC 20210

Subject: Definition of the Term "Fiduciary"; Conflict of Interest Rule—Retirement Investment Advice (RIN 1210-AB32);
Proposed Amendment to and Proposed Partial Revocation of Prohibited Transaction Exemption (PTE) 84-24 for Certain Transactions Involving Insurance Agents and Brokers, Pension Consultants, Insurance Companies and Investment Company Principal Underwriters (RIN 1210-ZA25); and
Proposed Best Interest Contract Exemption (RIN 1210-ZA25)

To Whom it May Concern:

This letter contains the comments of Securian Financial Group ("Securian") with respect to the Department of Labor's notice of proposed rulemaking concerning the Definition of the Term "Fiduciary" of an employee benefit plan (the "Proposed Regulation"), the related proposed Best Interest Contract Exemption, and the proposed amendment to prohibited transaction exemption 84-24 (collectively, the "Proposal").

Securian is one of the nation's largest and strongest financial services providers. Founded in 1880 as Minnesota Mutual, Securian has remained headquartered in St. Paul, Minnesota for its entire 135-year history. Our 5,000 associates and representatives work to provide life insurance, investment and retirement solutions to our clients throughout the country.

We support the administration's goal in ensuring that retirement savers get the best advice for their investment objectives, risk tolerance and financial needs. We support clear disclosures and honest education that help a consumer understand their investment decisions. In general, however, we are concerned about the Proposal because it is overly burdensome, costly and will result in consumers being left in a significantly worse position with less access to advice and limited options for savings.

In this regard, we fully support the concerns raised in the comment letters from the American Council of Life Insurers, Insured Retirement Institute and Financial Services Roundtable regarding the Proposal. We also want to take this opportunity to highlight some concerns specific to Securian.

Definition of "Insurance Commission" in PTE 84-24

Section IV(b)(1)(B) of proposed PTE 84-24, states "[t]he Insurance Commission, expressed as a percentage of gross annual premium payments for the first year and for each of the succeeding renewal years, that will be paid by the insurance company to the agent, broker or consultant in connection with the purchase of the recommended contract." The concern with this language is Insurance Commission for Securian's annuity products is not defined as a percentage of "gross annual premium payments" but rather as a percentage of the asset accumulation value at the end of each quarter. In fact, the insurance and financial services industry generally describes annuity payments as "purchase payments" or "contributions" rather than "premiums." Typically, the term "premium" is used to describe payment on an insurance policy.

Adviser compensation is generally tied to the accumulation value of an annuity contract and not to the amount of contributions or to the investment options selected by the plan fiduciary. As such, the Adviser has a vested interest in the growth of the accumulation value of the contract. **Therefore, we respectfully request the Department of Labor modify the reporting requirement of Insurance Commission on the proposed PTE 84-24 to include not only "gross annual premium payments" but also "asset accumulation value" and "contract value."**

With these changes, the "Insurance Commission" disclosure and PTE 84-24 would be the same as the compensation disclosure under 408(b)(2). The disclosure of the same amounts, calculated in the same way, would avoid confusion by plan fiduciaries and participants who might otherwise receive information that appeared to be conflicting.

Statutory Employees Benefits under PTE 84-24

Securian Advisers are treated as statutory employees and are provided the opportunity to participate in both a company sponsored health plan and a company sponsored 401(k) retirement plan. Securian subsidizes the health insurance premiums for the statutory employees based upon the statutory employee's sales. Sales included for this purpose include sales of both proprietary or nonproprietary products. These statutory employees are permitted to contribute to the 401(k) retirement plan based upon their individual earnings subject to FICA withholding. Securian also makes a contribution to the retirement plan which is a percentage of the statutory employee's earnings subject to FICA withholding. PTE 84-24 does not address whether the offering of company sponsored health benefits and retirement benefits would prevent all transactions of an adviser, who participates in such employer sponsored plans, would be precluded from qualifying for the use of PTE 84-24. **Since current public policy strongly encourages employers to provide both health and retirement benefits to their employees, we respectfully request the Department of Labor clarify that the offering of such employer sponsored benefits will not preclude the use of PTE 84-24.**

Similar issues exist in the proposed Best Interest Contract Exemption. **We respectfully request the Department of Labor clarify in that exemption that credits for retirement plans and health care are not incentive compensation that could influence a fiduciary adviser to make biased recommendations.**

Qualified Plans - Pass Through of 12B-1 Fees

Proposed PTE 84-24 limits the type of compensation that may be received by an adviser, broker or pension consultant for the service of effecting the purchase or sale of an insurance or annuity contract to "Insurance Commission" which includes "renewal fees and trailers, but not revenue sharing payments, administrative fees or marketing payments, or payments from parties other than the insurance company or its Affiliates." Since the inception of Securian's 401(k) product in the early 1990s, it has been Securian's practice to credit back any 12b-1 fees or revenue sharing payments to the appropriate separate accounts. This restores the 12b-1 fee or revenue sharing to the participant who held the investment that generated the payment. Securian credits the separate accounts the appropriate amount of 12b-1 fees and revenue sharing payments on a daily basis even though it receives these payments on a monthly or quarterly basis. Participants recognize the daily pass back in the form of a separate account operating expense reduction. **We respectfully request that the Department of Labor clarify that the receipt of 12b-1 fees and revenue sharing payments that are credited daily, through an insurance company separate account, to participants and not retained by the adviser, broker dealer or the insurance company (or any affiliate) is acceptable and allowed for under the proposed PTE 84-24.**

We appreciate the opportunity to provide comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Ayers", with a long horizontal flourish extending to the right.

Rick Ayers
Vice President, Retirement Plans
Securian Financial Group